



# Ethnic Cleansing in International Law (Elements – Legal Classification).

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**ABSTRACT:** Ethnic cleansing is the systematic and coercive removal of ethnic and religious groups from a specific area with the intention of making the region ethnically homogeneous. This research addresses the crime of ethnic cleansing in international law, examining its origins and content before exploring its legal elements. The legal classification of ethnic cleansing within the categories of international crimes is also analysed, and it is categorised based on the nature of the actions and the context as genocide, a crime against humanity or a war crime.

**Keywords:** Ethnic cleansing, crimes against humanity, war crimes, genocide.

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## Introduction

Ethnic cleansing is widely considered one of the most heinous crimes in modern times due to the severe human rights violations it entails, as well as its blatant assault on the principles of equality and human dignity. This crime has manifested itself in a horrifying manner in numerous armed conflicts, being committed on a large scale, as was seen in the former Yugoslavia, Rwanda, Myanmar, Palestine and other regions that have experienced ethnic and religious conflicts.

The term 'ethnic cleansing' is the subject of considerable debate in legal circles concerned with international crimes, particularly with regard to its classification as an international crime. This is due to the absence of a clear legal text that defines it as a crime or outlines its elements. This ambiguity places it in a grey area between the three primary crimes: genocide, crimes against humanity and war crimes.

Thus, the aim of this research is to define the concept of ethnic cleansing, highlighting its foundational elements, legal classification, and relationship with other international crimes.

## First: The concept of the crime of ethnic cleansing

There are multiple definitions of ethnic cleansing. Some researchers trace the origins of this crime back to ancient times. This is outlined below:

### 1. Origins of ethnic cleansing:

Some scholars cite the Assyrians' persecution of ethnic groups between the 9th and 7th centuries BCE as the earliest instance of ethnic cleansing. In 1002 CE, the British committed widespread massacres against the Danes, which some Western historians have classified as ethnic cleansing.

A similar term was used by the Nazis during Hitler's regime, when Jews were forcibly removed and deported to concentration camps and the area was labelled 'judenrein', meaning 'cleansed of Jews' in German<sup>1</sup>.

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<sup>1</sup>- Wissan Nizar Raji, Nibras Ibrahim Muslim, "The Crime of Ethnic Cleansing in International Criminal Law," Special Issue for Graduate Students' Research, Part Three, Volume 36, December 2021, pp. 884-885, available at: <https://www.researchgate.net/publication>

The term 'ethnic cleansing' was used by governmental and non-governmental organisations, as well as the United Nations and its agencies, during the war in the former Yugoslavia from 1992 to 1995. It was also employed by global media outlets<sup>1</sup>.

The term 'ethnic cleansing' was officially used for the first time in international law in United Nations Security Council Resolution No. 771 on 13 August 1992. This resolution emphasised that ethnic cleansing operations in the former Yugoslavia, particularly in Bosnia and Herzegovina, represented widespread violations of international humanitarian law. These violations included the mass deportation and torture of civilians in prisons, attacks on unarmed individuals, obstruction of humanitarian aid to civilians and severe property destruction<sup>2</sup>. The Security Council condemned ethnic cleansing in Resolutions 771, 719, 820, 824, 836, 859 and 941<sup>3</sup>.

## **2. Definition of the Crime of Ethnic Cleansing**

Unlike genocide, there is no specific legal definition of ethnic cleansing under an international treaty. This has led to considerable debate regarding its meaning in international jurisprudence<sup>4</sup>. Below, we will discuss the doctrinal definition of ethnic cleansing, the definition provided by the expert committee established by the United Nations under Security Council Resolution No. 780, and the definition provided by the International Court of Justice.

### **2.1. Doctrinal definition of ethnic cleansing**

Some legal scholars define ethnic cleansing as follows: 'Any form of violence based on ethnicity, involving the forced relocation of peoples, murder and rape.'<sup>5</sup>

Andrew Bell Filkoff defines ethnic cleansing as: 'The expulsion of unwanted populations from a specific area due to religious or ethnic discrimination, for political, strategic or ideological reasons, or a combination of these.'<sup>6</sup>

In his academic paper 'Ethnic Cleansing: A Systematic Attempt', published in the European Journal of International Law in 1994<sup>7</sup>, defines it as follows: 'A well-defined policy by a specific group of individuals intending to systematically eliminate another group due to its religious, ethnic or national origin, using violence and military force through all possible means of "discrimination" and "extermination", constituting violations of human rights and international humanitarian law.'

Michael Mann defines it as: 'The expulsion of an ethnic group from a territory by a dominant ethnic group in that area which considers the territory to be exclusively theirs.'<sup>8</sup>

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<sup>1</sup>- Wissan Nizar Raji, / Nibras Ibrahim Muslim, same reference, p. 885.

- Jean Philippe Barriere, "The Role of Peace Missions in the Fight Against Ethnic Cleansing: Analyzing the Case of the Goli District in AB. Khazie from 1994 to 1998," Master's Thesis, Université de Québec à Montréal, October 2010, pp. 44-45.

- Stéphane Rosière, "Ethnic Cleansing: A Geographical Approach," *Geographica Helvetica* 2004, pp. 227-237, available at: <https://hal.science/hal-03716687v1>.

<sup>2</sup>- UNSC, Resolution 771: (1992), available at: <https://daccess-dds-ny.un.org/doc/undoc/Gen/N92/379/72/IMG/N9237972.pdf?OpenElement>.

chaima Shams El-Din Hussein Abdel Ghafar, "The Crime of Ethnic Cleansing in International Law," *The Legal Journal*, Egypt, 2023, available at: <https://jlaw.hournals.ekb.eg>

<sup>3</sup>- Refer to the United Nations website at: [www.un.org](http://www.un.org)

<sup>4</sup>- Mohamed Salah Abdel-Lah Rabi, "International Protection of Civilian Populations Against Ethnic Cleansing," *Sharia and Law Journal*, Tanta, Issue 37, Part One, 2022, p. 350, available at: <https://mksq.journal.ekb.eg/article>.

<sup>5</sup>- Wissan Nizar Raji, Nibras Ibrahim Muslim, previous reference, p. 887.

<sup>6</sup>- Mohamed Salah Abdel-Lah Rabi, previous reference, p. 357.

<sup>7</sup>- Islam Shahada Al-Aloul, "Ethnic Cleansing Against the Palestinian People," *Al-Zaytouna Center for Studies and Consultations*, Lebanon, 1st edition, 2023, pp. 49-50.

<sup>8</sup>- chaima Shams El-Din Hussein Abdel Ghafar, "The Crime of Ethnic Cleansing in International Law," previous reference, p. 901.

## **2.2. Definition by the Expert Committee Established by the United Nations under Security Council Resolution No. 780**

On 6 October 1992, the Security Council issued Resolution No. 780, establishing an expert committee to assess information regarding violations of international humanitarian law in the former Yugoslavia, particularly in Bosnia and Herzegovina, with a focus on ethnic cleansing.

The expert committee defined ethnic cleansing as follows: 'A deliberate policy designed by a single ethnic or religious group to remove civilians belonging to other ethnic or religious groups from geographical areas using violent and terror-inducing methods.'<sup>1</sup>

According to this definition, some scholars argue that ethnic cleansing consists of several elements:

Ethnic cleansing is a deliberate and targeted policy pursued by one ethnic or religious group against another.

The implementation of ethnic cleansing involves extreme violence, including mass killings, rape, torture, arbitrary arrests and detentions, extrajudicial executions, the forcible deportation of civilians, military attacks or threats against civilians, the destruction of property and the erasure of the religious, ethnic and cultural identity and symbols of the targeted group.

- Ethnic cleansing occurs within the framework of false historical claims or out of revenge, with the aim of excluding an ethnic group from a specific area.
- It results in demographic changes by replacing the targeted ethnic group, which has been destroyed or displaced.

The practices committed in the context of ethnic cleansing constitute crimes against humanity and may fall under the categories of genocide and war crimes<sup>2</sup>.

## **2.3 Definition by the International Court of Justice of Ethnic Cleansing**

In the context of the International Court of Justice's consideration of the case of Bosnia and Herzegovina against Yugoslavia, it issued an order on September 13, 1993, stating: "Yugoslavia—Serbia and Montenegro—and its agents in Bosnia or elsewhere must immediately cease all acts of genocide and genocidal actions directed against the people and state of Bosnia and Herzegovina, which include, but are not limited to, killing, mass executions, torture, rape, mutilation, so-called 'ethnic cleansing,' the systematic destruction of villages and neighborhoods, starving civilians, preventing and obstructing humanitarian aid from the international community to civilians, bombing civilian gathering places, and detaining civilians in detention centers, among others."<sup>3</sup> The Court reinforced this order through orders issued in the same case on April 8, 1993, and September 13, 1993<sup>4</sup>.

The International Court of Justice defined ethnic cleansing as: "Making a region ethnically homogeneous by the use of force or intimidation to remove individuals from certain groups from that area."<sup>5</sup>

The Court noted that ethnic cleansing cannot constitute a form of genocide unless it falls within one of the

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<sup>1</sup>- Nagham Ishaq Ziad, "Dimensions of Ethnic Cleansing Within the Descriptions of the International Criminal System for International Crime," Academic Journal of Nawruz University 2020/2021, p. 22.

- Final report of the United Nations Commission of Experts established pursuant to Security Council Resolution 780, U.N. SCOR, Part III B, at 28, U.N. Doc S/1994/674. Available at: [http://www.his.com/twarich\\_commxu4/htm#par190](http://www.his.com/twarich_commxu4/htm#par190).

<sup>2</sup>- Nabil Ahmed Helmy, "The Crime of Genocide in International Law," Manshat Al-Ma'arif, Alexandria 2009, p. 147.

<sup>3</sup>- International Court of Justice, Reports 1993, Order of 13 September 1993, pp. 08, 09.

- Mohamed Salah Abdel-Lah Rabi, previous reference, p. 360.

<sup>4</sup>- International Court of Justice (ICJ), Judgment in the case concerning the application of the Convention on the Prevention and Punishment of the Crime of Genocide — Bosnia and Herzegovina v. Serbia and Montenegro, General List No. 91, 26 February 2007, Para 190.

<sup>5</sup>- ICJ, op.cit.

categories of genocidal acts. Moreover, the acts of ethnic cleansing must meet the specified intent requirement (criminal intent) for them to be considered genocide<sup>1</sup>.

The Court also indicated that the term 'ethnic cleansing' does not have legal significance in itself. This conclusion relates to the meaning of ethnic cleansing and its connection to genocide, crimes against humanity and war crimes<sup>2</sup>.

Ultimately, ethnic cleansing can be defined as the expulsion of a specific group, or of people who differ in ethnicity or religion, from a particular area by illegal means. These include killing, destruction of property, torture, arbitrary arrest and detention, confinement of civilians, forcible and forced displacement, deportation of civilians, extrajudicial executions, rape, and the initiation of military attacks or organised threats against civilians. The aim is to make the area ethnically homogeneous<sup>3</sup>.

## **Second: elements of the crime of ethnic cleansing**

Security Council Resolution No. 819 (1993)<sup>4</sup> emphasised that ethnic cleansing constitutes a serious violation of international humanitarian law and is considered an international crime<sup>5</sup>. As an international crime, ethnic cleansing is based on several elements, including legal, international, material and moral elements. Ethnic cleansing can manifest as a war crime or a crime against humanity, and it may also constitute genocide if the relevant criteria are met.

### **1. The Material and Legal Elements of the Crime of Ethnic Cleansing**

We will address the legal and material elements of the crime of ethnic cleansing.

#### **1.1 Legal Element**

The legal element is considered the fundamental component of crime in general, and of international crime in particular. This is based on the principle that there can be no crime without a legal text, and no punishment without a legal basis.

In international law, we find that unlawful acts derive their criminal nature primarily from international customs and treaties. Therefore, the legal element derives its existence from international custom, followed by international agreements. As ethnic cleansing is an international crime, the sources of criminalisation and punishment are the same as for other international crimes. The most important sources are:

#### **A. International custom**

International custom is considered the primary source of criminalisation and punishment for the crime of ethnic cleansing. Some acts committed in the context of ethnic cleansing have been recognised as crimes through custom and continue to be so, while others have been criminalised and codified in international treaties.

#### **B. International treaties and declarations**

##### **1. The Convention on the Prevention and Punishment of the Crime of Genocide (1948).**

This convention defines the acts that constitute genocide and clarifies the conditions that must be met<sup>6</sup>.

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1- Mohamed Salah Abdel-Lah Rabi, previous reference, p. 360.

2- Refer to the annual report of the United Nations High Commissioner for Human Rights, Human Rights Council, United Nations General Assembly, Eighth Session, Document No. 14/8/HRC/A issued on 28 May 2008, p. 11.

3- Mohamed Salah Abdel-Lah Rabi, previous reference, p. 350.

4- Refer to Security Council Resolution No. 819 adopted in session 3199 on 16/04/1993, Document No. S/RES/819/1993.

5- The international crime is defined as: a criminal act violating international law that harms the interests of states protected by this law. Refer to Stefan Glaser, "Droit International Pénal Conventionnel," Paris, 1957, p. 09.

6- Refer to Article 02 of the Convention on the Prevention and Punishment of the Crime of Genocide of

In its most severe forms, ethnic cleansing is considered genocide and criminalised under the Convention on the Prevention and Punishment of the Crime of Genocide<sup>1</sup>.

## **2. Universal Declaration of Human Rights (1948).**

All actions criminalised under the Universal Declaration of Human Rights fall within the scope of the crime of ethnic cleansing<sup>2</sup>. Article 2 of the Declaration states: 'Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion.'<sup>3</sup> Article 3 emphasises that: 'Everyone has the right to life, liberty and security of person.' Article 4 states: 'No one shall be held in slavery or servitude'<sup>4</sup>, and Article 5 asserts that 'No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.'<sup>5</sup> 'No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.'<sup>6</sup>

## **3. The Four Geneva Conventions of 1949 and their Additional Protocols of 1977.**

The actions that constitute the crime of ethnic cleansing are criminalised under the four Geneva<sup>7</sup> Conventions of 1949 and their two Additional Protocols of 1977<sup>8</sup>. Violations of the rules set out in these agreements are considered international crimes and are punishable offences<sup>9</sup>.

## **4. Statutes of the International Criminal Tribunals (Temporary and Permanent)**

### **4.1 Statutes of the Temporary International Criminal Tribunals**

The International Criminal Tribunals for the former Yugoslavia (1993) and Rwanda (1994) were established to prosecute and punish serious violations of international humanitarian law, particularly ethnic cleansing crimes, that occurred in the territories of the former Yugoslavia and Rwanda.

#### **4.1.1 Statute of the International Criminal Tribunal for the former Yugoslavia (ICTY) 1993**

Statute of the International Criminal Tribunal for the Former Yugoslavia (ICTY), 1993

Article 2<sup>10</sup> addresses grave breaches of the 1949 Geneva Conventions, while Article 3<sup>11</sup> addresses

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1948.

<sup>1</sup>- chaima Shams El-Din Hussein Abdel Ghafar, "The Crime of Ethnic Cleansing in International Law," previous reference, p. 904.

<sup>2</sup>- Refer to Article 02 of the Universal Declaration of Human Rights 1948.

<sup>3</sup>- Shaimaa Shams El-Din Hussein Abdel Ghafar, "Criminal Responsibility for the Crime of Ethnic Cleansing," PhD Thesis, Faculty of Law, Zagazig University, 2021, p. 23.

<sup>4</sup>- Article 03 of the Universal Declaration of Human Rights 1948.

<sup>5</sup>- Article 04 of the Universal Declaration of Human Rights 1948.

<sup>6</sup>- Article 05 of the Universal Declaration of Human Rights 1948.

<sup>7</sup>- These agreements include:

- First Convention: Improving the Condition of the Wounded and Sick in Armed Forces in the Field
- Second Convention: Improving the Condition of the Wounded, Sick, and Shipwrecked Members of Armed Forces at Sea

- Third Convention: Regarding the Treatment of Prisoners of War

- Fourth Convention: Regarding the Protection of Civilians in Time of War

- Article 02 of the Statute of the Yugoslav Tribunal grants the court the authority to prosecute individuals for serious violations of the Geneva Conventions of 12 August 1949 committed in international armed conflicts.

- Article 03 of the Statute of the Yugoslav Tribunal grants the court jurisdiction over other serious violations of the laws and customs of war.

Refer to Article 04 of the Statute of the Yugoslav Tribunal, which grants the court jurisdiction over genocide.

<sup>8</sup>- Refer to Article 05 of the Statute of the Yugoslav Tribunal, which grants the court jurisdiction over crimes against humanity.

<sup>9</sup>- Article 06 of the Yugoslav Tribunal states the following:

<sup>10</sup>- chaima Shams El-Din Hussein Abdel Ghafar, "The Crime of Ethnic Cleansing in International Law," previous reference, p. 905.

<sup>11</sup>- Abdul Hamid Mohamed Abdul Hamid, "The International Criminal Court," 1st edition, Dar Al-Nahda

violations of the laws and customs of war. Article 4<sup>1</sup> defines genocide, while Article 5<sup>2</sup> addresses crimes against humanity. Article 6<sup>3</sup> outlines personal jurisdiction, establishing the responsibility of individuals who commit these crimes, which fall within the scope of ethnic cleansing<sup>4</sup>.

#### **4.1.2 Statute of the International Criminal Tribunal for Rwanda (ICTR), 1994**

On 8 November 1994, the Security Council issued Resolution No. 955, establishing the International Criminal Tribunal for Rwanda. The Tribunal is tasked with prosecuting individuals responsible for serious violations of international humanitarian law committed in Rwanda between 1 January and 31 December 1994<sup>5</sup>, as well as Rwandan citizens responsible for these violations in neighbouring countries during the same period. The Tribunal has jurisdiction to punish crimes of genocide (Article 2)<sup>6</sup>, crimes against humanity (Article 3)<sup>7</sup> and violations of Article 3 common to the 1949 Geneva Conventions and the Additional Protocol concerning non-international armed conflicts (Article 4)<sup>8</sup>.

Therefore, crimes that fall within the scope of ethnic cleansing, which may manifest as crimes against humanity, genocide or war crimes, are criminalised under the Statute of the ICTR.

#### **4.2 Statute of the International Criminal Court (ICC) 1998**

The Rome Statute, issued on 17 July 1998, defines the types of international crimes for which the International Criminal Court has jurisdiction to prosecute and punish in Article 5<sup>9</sup>: genocide (Article 6)<sup>10</sup>, crimes against humanity (Article 7)<sup>11</sup>, war crimes (Article 8)<sup>12</sup>, and the crime of aggression (Article 8 bis)<sup>13</sup>. The Rome Statute criminalises ethnic cleansing and the crimes committed within its framework, and the International Criminal Court is competent to prosecute and punish these crimes as international crimes, since acts of ethnic cleansing can manifest as war crimes, crimes against humanity or genocide in its most severe form<sup>14</sup>.

### **1.2 The material element:**

The material element of a crime represents its physical manifestation. The material act is the action that is criminalised by a legal text. The material element consists of three components: criminal behaviour; the result; and the causal relationship between the two.

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Al-Arabiya, 2010, p. 196.

<sup>1</sup>- Article 02 of the Statute of the Yugoslav Tribunal grants the court the authority to prosecute individuals for serious violations of the Geneva Conventions of 12 August 1949 committed in international armed conflicts.

<sup>2</sup>- Article 03 of the Statute of the Yugoslav Tribunal grants the court jurisdiction over other serious violations of the laws and customs of war.

<sup>3</sup>- Refer to Article 04 of the Statute of the Yugoslav Tribunal, which grants the court jurisdiction over genocide.

<sup>4</sup>- Abdul Hamid Mohamed Abdul Hamid, "The International Criminal Court," 1st edition, Dar Al-Nahda Al-Arabiya, 2010, p. 196.

<sup>5</sup>- Refer to Article 02 of the Statute of the Rwanda Tribunal.

<sup>6</sup>- Refer to Article 03 of the Statute of the Rwanda Tribunal.

<sup>7</sup>- Refer to Article 04 of the Statute of the Rwanda Tribunal. Abdul Hamid Mohamed Abdul Hamid, "The International Criminal Court," 1st edition, Dar Al-Nahda Al-Arabiya, 2010, p. 196 and beyond.

<sup>8</sup>- Refer to Article 05 of the Statute of the International Criminal Court.

- Haidar Abdul Razaq Hamid, "The Development of International Criminal Justice," Dar Al-Kutub Al-Qanuniya, 2008, p. 14.

<sup>9</sup>- Refer to Article 06 of the Statute of the International Criminal Court.

<sup>10</sup>- Refer to Article 07 of the Statute of the International Criminal Court.

<sup>11</sup>- Refer to Article 08 of the Statute of the International Criminal Court.

<sup>12</sup>- Refer to Article 08 bis of the Statute of the International Criminal Court.

<sup>13</sup>- chaima Shams El-Din Hussein Abdel Ghafar, "The Crime of Ethnic Cleansing in International Law," previous reference, p. 906.

<sup>14</sup>- William Najeeb George Nassar, "The Concept of Crimes Against Humanity in International Law," 1st edition, Center for Arab Unity Studies 2008, p. 114.

## **A. Criminal behaviour**

In the context of ethnic cleansing, the criminal behaviour is represented by acts committed to cleanse a specific territory of a defined group due to their ethnic or religious affiliations. The aforementioned United Nations expert committee outlined the following acts committed in the context of ethnic cleansing in its report:

### **1. Intentional killing of members of the victim group**

Killing is considered a means of ethnic cleansing, whether to intimidate the victim group and force them to leave, or to attempt to eliminate them partially or completely. An example of this occurred in Palestine, where massacres aimed to cleanse the region and make it ethnically homogeneous. For instance, numerous individuals were killed in al-Abbasiyya on 13 December 1947, near Jaffa, one of the largest Palestinian cities, and the area was completely destroyed. Two settlements were then established by Israeli occupation forces in its place: 'Yehuda' and 'Beit Shmuel'. A similar scenario unfolded in Balad al-Sheikh, a village near Haifa, from 31 December 1947 to 1 January 1948. The settlement Tel Hanan was established there in 1949, after the occupation forces had displaced the inhabitants and destroyed their homes<sup>1</sup>.

### **2. Torture and inhumane treatment**

Article 7(2)(e) of the Statute of the International Criminal Court defines torture as follows: 'The intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; however, this does not include pain or suffering arising only from lawful sanctions, or which is inherent in or incidental to such sanctions<sup>2</sup>.' Thus, torture and inhumane treatment can constitute ethnic cleansing if the necessary conditions are met.

### **3. Persecution**

Persecution refers to the mistreatment of a person or group of individuals due to their political, religious, racial, cultural, sectarian, denominational, national or ethnic affiliation, or due to their gender<sup>3</sup>. Article 7(2)(g) of the Statute of the International Criminal Court defines persecution as follows: 'The intentional deprivation of a group or groups of the population of fundamental rights, contrary to international law, based on the identity of the group<sup>4</sup>.'

The International Criminal Tribunal for the former Yugoslavia defined the crime of persecution as consisting of discriminatory acts or omissions that violate or deny a right established in international convention or customary law, executed intentionally with the intent to discriminate based on race, religion, or political opinion<sup>5</sup>.

Persecution is also criminalised in the United Nations Charter in Articles 3, 13(4) and 55(c)<sup>6</sup>, and included in the 1948 Universal Declaration of Human Rights in Article 14, which states: 'Everyone has the right to seek asylum in other countries and to enjoy asylum from persecution...'<sup>7</sup>

Persecution is considered to be at the heart of ethnic cleansing, as ethnic, religious or political groups are systematically persecuted and deprived of all basic rights contrary to norms and laws because of their

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1- Article 7/2/h of the Statute of the International Criminal Court. Wissan Nizar Raji, Nibras Ibrahim Muslim, previous reference, p. 889.

2- Bashar Rashid, "International Criminal Responsibility for Crimes Against Peace and Humanity," PhD Thesis, Abu Bakr Belkaid University, Tlemcen 2018, p. 65.

3- Refer to Article 07/2/z of the Statute of the International Criminal Court.

4- Prosecutor v. Stakic, Case No. IT-97-24-A, Judgment, Para. 327 (Mar 22, 2006).

5- Refer to the United Nations Charter 1945.

6- Refer to the Universal Declaration of Human Rights 1948 — Bashar Rashid, previous reference, p. 65.

7- chaima Shams El-Din Hussein Abdel Ghafar, "The Crime of Ethnic Cleansing in International Law," previous reference, p. 908.

identity<sup>1</sup>.

#### **4. Forcible displacement:**

Forcible displacement refers to the transfer of individuals from their legally inhabited areas through expulsion or any other means without lawful justification or legal grounds permitted by international law<sup>2</sup>.

It is a practice associated with ethnic cleansing, carried out by a government or specific group against another group due to their political, religious or ethnic affiliations. The aim is to clear a specific territory and create an ethnically homogeneous region. It is considered a distinguishing feature of the crime of ethnic cleansing.

In Palestine, Israeli occupation forces have committed numerous massacres in order to expedite the forcible displacement of Palestinians for the purposes of ethnic cleansing<sup>3</sup>.

#### **5. Intentional destruction of property**

Both the Statute of the International Criminal Court and the Statute of the International Criminal Tribunal for the former Yugoslavia consider intentional destruction of property to be a war crime<sup>4</sup>. Such acts seek to eradicate all cultural and historical traces of the targeted group from the territory, with the aim of maintaining qualitative and ethnic homogeneity within the population of the territory earmarked for ethnic cleansing. According to the United Nations expert committee report, acts committed in the context of ethnic cleansing are crimes against humanity and may also resemble certain war crimes, potentially falling under the framework of the Genocide Convention<sup>6</sup>.

#### **6. Occupation and Forceful Seizure of Land**

In the context of ethnic cleansing, land may be seized by force to intimidate the targeted group and create an ethnically homogeneous area. In Resolution No. 819 (1993), the Security Council condemned the pattern of military actions conducted by Bosnian Serb paramilitary units against towns and villages in Eastern Bosnia, as part of the conflict in Bosnia and Herzegovina. In this regard, the Council affirmed that the occupation or seizure of land by force, or the threat of its use, in the context of ethnic cleansing is an unlawful and unacceptable practice<sup>7</sup>.

#### **B. The result:**

The result is the direct manifestation of a violation of a right protected by law<sup>8</sup>, impacting an international interest safeguarded by international legal norms<sup>9</sup>. In the context of ethnic cleansing, the desired outcome is achieved by removing a specific group from a certain territory using the aforementioned means.

#### **D. Causal Relationship:**

This refers to the connection between behaviour and result, meaning that the behaviour must have led to the outcome, or at least be a sufficient cause of it. In essence, ethnic cleansing in a given territory must be

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<sup>1</sup>- Refer to Article 07/02-d of the Statute of the International Criminal Court.

<sup>2</sup>- Shaimaa Shams El-Din Hussein Abdel Ghafar, "International Criminal Responsibility for the Crime of Ethnic Cleansing," PhD Thesis, Faculty of Law, Zagazig University, 2021, p. 28.

<sup>3</sup>- William Najeeb George Nassar, previous reference, p. 110.

<sup>4</sup>- Refer to Article 08/02-b-09 of the Statute of the International Criminal Court.

<sup>5</sup>- Refer to Article 03/d of the Statute of the Former Yugoslav Tribunal.

<sup>6</sup>- chaima Shams El-Din Hussein Abdel Ghafar, "International Criminal Responsibility for the Crime of Ethnic Cleansing," p. 28.

<sup>7</sup>- Refer to Paragraph 05 of Security Council Resolution No. 819 (1993) dated 16/04/1993, Document No. S/RES/819/1993.

<sup>8</sup>- Mahmoud Najeeb Hosni, "Lessons in International Criminal Law," Dar Al-Nahda Al-Arabiya, Cairo 1959-1960, p. 63.

<sup>9</sup>- Montaser Said Hamouda, "The International Criminal Court," Dar Al-Jamiaa Al-Jadida, Alexandria 2006, p. 31.



the result of criminal behaviour committed by the perpetrators. If there is no causal relationship between the behaviour and the criminal result, the crime of ethnic cleansing cannot be established<sup>1</sup>.

## **2. The Moral and International Elements of the Crime of Ethnic Cleansing**

In addition to the material and legal elements, the crime of ethnic cleansing requires two further elements: the international and moral elements. These are as follows:

### **2.1 The Moral Element**

The moral element of an international crime is no different to that of a domestic crime; both require criminal intent, or the intention to harm others or the international community. This reflects the perpetrator's psychological and mental state at the time of committing the crime.

In international crimes, criminal intent is based on knowledge and will, as outlined in Article 30 of the Rome Statute<sup>2</sup>. The required criminal intent for the crime of ethnic cleansing is general intent, consisting of two components: knowledge and will. This means that the perpetrator must be aware of the nature of their internationally criminal behaviour, recognise that their actions constitute ethnic cleansing and intend to commit the criminal act to achieve the desired result<sup>3</sup>.

Additionally, specific criminal intent is required: the intention to cleanse a particular territory of a specific group due to their ethnic, religious, political or cultural affiliations, with the aim of creating an ethnically homogeneous area. In the absence of intent, the crime is not ethnic cleansing, but another type of crime<sup>4</sup>.

### **2.2 The international element:**

International crimes are distinguished from domestic crimes by the international element, which refers to an international crime being committed through a plan devised and prepared by a state. An international crime is perpetrated by an individual acting on behalf of, or with the encouragement of, the state. This represents the personal aspect. The objective aspect is reflected in the fact that the protected interest is of an international nature; international crimes affect the interests or values of the international community or its vital facilities<sup>5</sup>.

In order to establish the international character of the crime of ethnic cleansing, it must be shown that the act or omission impacts the interests or values of the international community, which international law seeks to protect. This means that the act must be considered an international crime under customary international law or by virtue of an international treaty. All acts that constitute the material element of ethnic cleansing are legally grounds for criminalisation and punishment under either customary international law or international treaties and conventions<sup>6</sup>.

### **Thirdly: the legal qualification of the crime of ethnic cleansing**

We will discuss the legal qualification of ethnic cleansing, noting that some consider it to be genocide, while others view it as a potential crime against humanity or war crime in certain circumstances.

#### **1. Ethnic cleansing as genocide**

Both Article 2 of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide and

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1- chaima Shams El-Din Hussein Abdel Ghafar, "The Crime of Ethnic Cleansing in International Law," previous reference, p. 910.

2- Refer to Article 30 of the Statute of the International Criminal Court.

3- chaima Shams El-Din Hussein Abdel Ghafar, "The Crime of Ethnic Cleansing in International Law," previous reference, p. 911.

4- Wissan Nizar Raji, Nibras Ibrahim Muslim, previous reference, p. 890.

5- Abdullah Suleiman Suleiman, "Fundamentals in International Criminal Law," Diyan Al-Matbou'at Al-Jami'iyah, 1992, pp. 69-70.

6- chaima Shams El-Din Hussein Abdel Ghafar, "The Crime of Ethnic Cleansing in International Law," previous reference, p. 912.

Article 6 of the Statute of the International Criminal Court provide definitions of genocide<sup>1</sup>. Due to the similarities between ethnic cleansing and genocide, the United Nations declared in Resolution 121/47, issued on 18 December 1992, that: 'Ethnic cleansing is a form of genocide.'<sup>2</sup>

Furthermore, the International Tribunals for Yugoslavia and Rwanda have ruled that ethnic cleansing constitutes genocide<sup>3</sup>. The Yugoslav tribunal stated in one of its rulings that there is a clear similarity between genocidal and ethnic cleansing policies. It determined that, for genocide to occur, 'there must be a clear relationship between the physical destruction and the abstract disintegration of the group; the expulsion of a group or part of it is not sufficient in itself to constitute genocide'<sup>4</sup>. This was also affirmed by the independent commission of inquiry established by the Security Council in Resolution 22/34 in 2018, which investigated actions taken by the state of Myanmar against the Rohingya minority. The commission found that cleansing operations in the towns of Maungdaw, Buthidaung and Rathidaung indicated specific intent to commit genocide<sup>5</sup>.

Acts of ethnic cleansing that constitute genocide depend on the presence of the acts specified in Article 2 of the Convention on the Prevention and Punishment of Genocide, as well as the intent to destroy the group, either partially or completely<sup>6</sup>.

Although the term 'ethnic cleansing' is subordinate to 'genocide', the two differ from each other. The distinction between ethnic cleansing and genocide is based on the perpetrator's intent rather than the number of deaths or victims. According to the Genocide Convention's definition of genocide, it involves the destruction of a particular ethnic or national group. In contrast, ethnic cleansing aims to intimidate and forcibly expel civilians on a large scale. The purpose is to cleanse a territory through genocidal policies<sup>7</sup>.

While both ethnic cleansing and genocide constitute violations of human rights and international humanitarian law, genocide is the most egregious form of ethnic cleansing<sup>8</sup>.

## **2. Ethnic cleansing as a war crime and a crime against humanity**

Although ethnic cleansing is not explicitly mentioned in the Rome Statute or Article 2 of the Genocide Convention, the Statute of the International Criminal Court (ICC) incorporates elements of ethnic cleansing within the framework of crimes against humanity<sup>9</sup>, war crimes and genocide. These crimes fall

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<sup>1</sup>- Article 02 of the Convention on the Prevention and Punishment of the Crime of Genocide, December 9, 1948, entered into force on January 12, 1951, states: "Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial, or religious group, as such:

A. Killing members of the group.  
B. Causing serious bodily or mental harm to members of the group.  
C. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part.

D. Imposing measures intended to prevent births within the group.  
E. Forcibly transferring children of the group to another group."

<sup>2</sup>- Refer to Security Council Resolution 121/47/A/RES issued on December 18, 1992.

<sup>3</sup>- Refer to the case of Radislav Krstic IT-98-33 on the website: [www.icty.org](http://www.icty.org).

<sup>4</sup>- chaima Shams El-Din Hussein Abdel Ghafar, "The Crime of Ethnic Cleansing in International Law," previous reference, p. 915.

<sup>5</sup>- Nagham Ishaq Ziya, "Dimensions of Ethnic Cleansing Within the Descriptions of the International Criminal System for International Crime," Academic Journal of Nawruz University 2017, p. 223.

- See the "Report of the Detailed Findings of the Independent International Fact-Finding Mission on Myanmar," Human Rights Council, Thirty-Ninth Session, 10-28 September 2018, Agenda Item 4, pp. 180-250, p. 365.

<sup>6</sup>- chaima Shams El-Din Hussein Abdel Ghafar, "The Crime of Ethnic Cleansing in International Law," previous reference, pp. 915-916.

<sup>7</sup>- Stéphane Rosiere, "Ethnic Cleansing: A Geographical Approach," Geographica Helvetica 2004, p. 228.

<sup>8</sup>- chaima Shams El-Din Hussein Abdel Ghafar, "The Crime of Ethnic Cleansing in International Law," previous reference, p. 916.

<sup>9</sup>- Refer to Article 05 of the Statute of the Former Yugoslav Tribunal, Article 03 of the Statute of the

under the ICC's jurisdiction for prosecution and punishment<sup>1</sup>.

During the conflict in the former Yugoslavia in the 1990s, the killings and other actions that took place in Kosovo were not intended to completely exterminate a different national or religious group. Instead, the aim was to remove them from areas that Serbs wanted exclusively for themselves. This methodology was recognised as ethnic cleansing and, in many recorded cases, has been classified as a crime against humanity. However, it was not categorised as genocide, despite instances of genocide occurring during these operations<sup>2</sup>.

In the context of the Rwanda Tribunal, the First Instance Chamber ruled that ethnic cleansing constituted a crime against humanity when it convicted François Karera, the former Governor of Kigali Province, of committing acts of ethnic cleansing, genocide and murder as crimes against humanity. This was based on his involvement in the killing of Tutsis in April and May 1994, for which he was sentenced to life imprisonment<sup>3</sup>.

Ethnic cleansing, which aims to eliminate a population from a specific area without identifying the targeted group or intending to destroy them as a group, can constitute crimes against humanity if it involves a systematic and widespread attack on civilian populations. Regarding the conflict in the former Yugoslavia, the United Nations Secretary-General noted that the inhumane acts there constituted ethnic cleansing<sup>4</sup>.

Furthermore, it should be noted that most methods of ethnic cleansing constitute serious violations of the 1949 Geneva Conventions and their 1977 Additional Protocols. This was confirmed by Security Council Resolution No. 771 (1992) on 13 August 1992, which explicitly used the term 'ethnic cleansing' and stated that it violates international humanitarian law<sup>5</sup>. This was reiterated in Resolutions 819 (16 April 1993), 824 (6 May 1993), 827 (25 May 1993), 836 (4 June 1993), 859 (27 August 1993), 787 (16 November 1993) and 820 (17 April 1993)<sup>6</sup>. Article 8 of the Rome Statute also refers to practices that clearly constitute ethnic cleansing, which can be prosecuted as a war crime if it falls within one of the recognised categories of this crime during armed conflicts of either type<sup>7</sup>.

Thus, depending on the circumstances and the presence of the elements of any of these crimes, ethnic cleansing can be classified as genocide, a war crime, or a crime against humanity.

## **Conclusion:**

From the above discussion in our research, we have concluded that:

The crime of ethnic cleansing is one of the most heinous violations perpetrated against humanity. It targets groups based on their ethnic, religious or national identities, seeking to erase their physical and cultural existence in a specific territory.

Despite its severity, it has become clear that this crime has not been defined independently in the statutes of international criminal tribunals, including the Rome Statute, but is included among the acts constituting international crimes, such as genocide and crimes against humanity.

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Rwanda Tribunal, and Article 07 of the Statute of the International Criminal Court, which address crimes against humanity.

1- chaima Shams El-Din Hussein Abdel Ghafar, "The Crime of Ethnic Cleansing in International Law," previous reference, p. 917.

2- William Najeeb George Nassar, previous reference, pp. 90-91.

3- See the "Karera François Case, ICTR-01-74," on the website of the International Criminal Tribunal Mechanism, at: [ucr.irmct.org](http://ucr.irmct.org).

4- Nagham Ishaq Ziya, previous reference, p. 228.

5- Same reference, p. 229.

6- Refer to the United Nations website at: [www.un.org](http://www.un.org).

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7- Refer to Article 08 of the Rome Statute.

Therefore, we recommend the following:

1. The necessity of adopting a precise and clear definition of ethnic cleansing that distinguishes it from other crimes.
2. Supporting educational and awareness programmes about ethnic and cultural diversity as a preventive measure to reduce the hatred that leads to ethnic cleansing.
3. Urging states to criminalise ethnic cleansing in their national legislation to ensure accountability and prevent impunity.

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